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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,800	02/04/2004	Wesley Allen Bainter	3120W	3350
7590	01/04/2006		EXAMINER	
Robert O. Blinn P.O. Box 75144 Wichita, KS 67275-0144			BEACH, THOMAS A	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/771,800	Applicant(s) BAINTER, WESLEY ALLEN	
	Examiner Thomas A. Beach	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-14 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5 and 6 is/are rejected.
- 7) ☒ Claim(s) 4 and 7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>05/14/04</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Priority

1. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. [1] as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed application, Application No. 10/728,623, fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. This application does not share any of the disclosure of the parent case, thus failing to be sufficient to comply with the requirements.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Wallace 4,974,348. Wallace shows a trencher unit 10 for attaching to a loader of the type of arms 11 and upright boom, digging chain 17 and support frame 14, chain drive motor 16 where the chain when lowered is able to excavate a trench and a generally transverse, adjustably mounted augers 81 with an auger sprocket, a drive sprocket 80 and an idler wheel 19 whereby the operator may control the position of the trencher unit and bring the chain into penetrating and digging contact with the earth where the auger assembly pushes away the excavated soil.

As concerns claim 2, Wallace shows the auger assembly includes at least two auger drive sprockets 70 fixed to transverse auger shafts, the auger shafts rotatably mounted to the auger assembly and extending from both sides thereof, the auger drive sprockets engaging the digging chain on either side of the support frame and wherein each auger shaft is adapted for receiving an auger on both sides of the auger assembly (figures 9).

As concerns claim 3, Wallace shows the auger assembly includes at least two auger drive sprockets 70 fixed to transverse auger shafts, the auger shafts rotatably mounted to the auger assembly and extending from both sides thereof, the auger drive sprockets engaging the digging chain on either side of the support frame and wherein each auger shaft is adapted for receiving an auger on both sides of the auger assembly,

each auger may be adjustably mounted to each auger shaft between a closely spaced position and a widely spaced .(figures 3, 8 & 9).

As concerns claim 5, Wallace shows a skid plate assembly mounted to the front of the digging chain support frame including a skid arm 71 and a skid plate 76 for contacting the ground in front of the digging chain support frame to limit undesired forward pivoting movement thereof.

As concerns claim 6, Wallace shows an adjustable brace assembly mounted behind the digging chain support frame including an extendible brace arm 71 for providing a brace between digging chain support frame and the loader to limit pivoting movement of the digging chain support frame. Position.

Allowable Subject Matter

4. Claims 4 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 8-14 are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Beach whose telephone number is 571.272.6988. The examiner can normally be reached on Monday-Friday, 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571.272.6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thomas A. Beach


December 8, 2005

THOMAS A. BEACH
Patent Examiner

Group 3600